IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1928

WP(C).No. 17522 of 2006(J)

PETITIONER:

JOSEPH, S/O.AUGUSTINE RAPHEL,
KURISSUVEETTIL, CHERANELLOOR.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR (L.A),
NO.1, NATIONAL HIGHWAY,
KAKKANAD, ERNAKULAM.

2. DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF JUDGMENT IN O.P.NO.7252/2003 DATED 14.3.2003 OF THIS COURT.

EXT.P2 TRUE COPY OF DECREE IN L.A.R.NO.221/94 DATED 20.11.2003 OF THE III ADDL. SUB JUDGE, ERNAKULAM.

EXT.P3 TRUE COPY OF REGISTERED LETTER TO SPECIAL TAHSILDAR LA, KAKKANAD BY PETITIONER WITH COPY TO DISTRICT COLLECTOR, ERNAKULAM DATED 17.3.2004.

EXT.P4 TRUE COPY OF THE REGISTERED LETTER NO.C1-566/04 DATED 8.2.2006 OF THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R1(a) LETTER NO.LAC 88/91 DATED 8.2.1994.

//TRUE COPY//

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K.T. SANKARAN, J.

W.P.(C) NO. 17522 OF 2006 J

Dated this the 24th day of August,2007

JUDGMENT

The questions involved in this Writ Petition are: (1) Is it incumbent upon the Reference Court under the Land Acquisition Act to refer back the papers to the Land Acquisition Authority if the claimant dies after reference? (2) Whether the legal representatives of the claimant are entitled to come on record as such in substitution of the deceased claimant in the Land Acquisition Reference proceedings? and (3) What should be the procedure if the Land Acquisition Authority does not return the papers after complying with the directions issued by the Reference Court within a reasonable time?

2. An extent of 4.10 Ares of land belonging to one Raphel was acquired along with other lands. On 20.6.1992, an award was passed. Since there was dispute regarding disbursement of the award amount, reference was made under Section 31(2) of the Land Acquisition Act, which was numbered as L.A.R.No.221 of 1994, on the file of the Sub Court, Ernakulam. Raphel, who was `B' claimant, died on 5.10.1994. The legal representatives of Raphel, one of whom is the petitioner in this Writ Petition, filed an application to get themselves impleaded in the land

acquisition proceedings in L.A.R.No.221 of 1994. Instead of impleading them, the Reference Court issued a direction to the Land Acquisition Officer to get a report regarding identity of the legal representatives of Raphel. That case was being adjourned from 1994 to 1998 awaiting the report of the Land Acquisition Officer. Till 2003 nothing tangible transpired. The petitioner herein filed O.P.No.7252 of 2003, which was disposed of as per judgment dated 14.3.2003, directing the Land Acquisition Officer to re-submit the land acquisition file to the Reference Court. It was held that if the Land Acquisition Officer fails to do so, the petitioner would be free to supply all the relevant documents before Court and the court below should reconstruct the file on the basis of such records. It is submitted that the Land Acquisition Officer did not comply with the directions and on the basis of the documents produced by the petitioner the files were reconstructed and L.A.A.No.221 of 1994 was disposed of as per Ext.P2 decree, holding that the legal representatives of Raphel would be entitled to receive the amount of compensation.

3. Deceased Raphel had filed an application for reference under Section 18 of the Land Acquisition Act claiming enhanced compensation. Reference was made and the case was numbered as L.A.A.No.299 of 1994. After reference, Raphel died. His legal representatives were not

impleaded as no steps were taken either by the Land Acquisition Officer or by the legal representatives of deceased Raphel in that regard. The learned counsel for the petitioner submits that no notice was issued to Raphel in L.A.A.No.299 of 1994 nor did he appear in the case. The counsel submits that the legal representatives of Raphel were not bound to do anything in the Land Acquisition Reference. The Writ Petition is filed praying for the issue of a writ of mandamus commanding the respondents, The Special Tahsildar (Land Acquisition) and the District Collector, to make a reference to the appropriate court or to take steps to reconstruct the records of the Reference Court for disposal of the case.

4. The petitioner submitted Ext.P3 representation dated 17.3.2004, to the Special Tahsildar and District Collector stating the facts in detail and requesting for a reference showing the names of the legal representatives of Raphel to enable them to prosecute their claim for enhancement of compensation. Ext.P4 letter dated 8.2.2006 was sent by the Special Tahsildar to the petitioner stating that on getting the information of the District Government Pleader, he is of the view that a second reference is not possible as requested for in Ext.P3, presumably under the impression that what was prayed for by the petitioner was for a second reference.

5. A counter affidavit is filed by the first respondent stating that reference application made by Raphel was forwarded to the Sub Court, Ernakulam as per letter dated 8.2.1994, which was despatched on 16.3.1994. The stand taken by the first respondent is that once the reference is made under Section 18, a second reference is not possible under law.

6. A report was called for from the Principal Sub Judge, Ernakulam. It is reported that the reference was made to that Court and it was numbered as L.A.R.No.299 of 1994 on 8.4.1994. After the death of the claimant Raphel, the Land Acquisition Officer was addressed to report about the particulars of the legal representatives. Since no reply was received, on 24.8.1995, the reference was returned for re-presentation after obtaining the correct address of the legal representatives of the deceased claimant. It is also reported that thereafter the papers were not re-presented. It is further stated that the status of the case is “idle” and the file is kept in the record section of the Court.

7. Section 53 of the Land Acquisition Act reads as follows:

> “53. Code of Civil Procedure to apply to proceedings before Court:- Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of

> Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings before the Court under this Act."

If the provisions of the Code of Civil Procedure apply, certainly the provisions of Order XXII of the Code of Civil Procedure also must apply. Order XXII Rule 3 provides for impleading the legal representatives of the deceased plaintiff. Rule 2 of Order XXII provides for recording that the surviving plaintiffs or defendants shall represent the estate of the deceased plaintiff or defendant. Article 120 of the Limitation Act provides for a period of ninety days for filing the application for impleading the legal representatives of the deceased plaintiff or defendant. If no such application for impleading the legal representatives is filed within ninety days, there would be abatement. Article 121 of the Limitation Act provides for a period of sixty days to set aside the abatement. Even if no such application is filed within 150 days from the date of death, the delay can be condoned under Section 5 of the Limitation Act.

8. The question whether the provisions of Order XXII of the Code of Civil Procedure would apply to Land Acquisition References was considered by various High Courts. The Calcutta High Court in **State of W.B**. v. **Dwijendra Chandra Sen** (AIR 1979 Calcutta 182), held that Order XXII of the Code of Civil Procedure would apply to Land Acquisition

References. In that decision, the Calcutta High Court held thus:

> "12. By virtue of Section 53 of the Land Acquisition Act the provisions of Civil Procedure Code are applicable to all proceedings before the Court under the Act unless such provision in the Code is inconsistent with anything contained in the Act. Any provision in the Land Acquisition Act would not appear directly to be inconsistent with the principle of substitution under Order 22 of the Civil Procedure Code. The reference under that Act cannot be regarded in any way different from an ordinary Civil Proceeding. In this view of the matter, a reference under Section 18 of the Land Acquisition Act or an appeal arising out of an award would be attracted by Order 22 of the Civil Procedure Code...."

The Gujarat High Court in **Alihusain Abbasbhai and others** v. **Collector, Panch Mahals** (AIR 1967 GUJARAT 118), held that a reference under Section 18 of the Land Acquisition Act is a proceeding before Court and by virtue of Section 53 of the Act, the provisions of the Code of Civil Procedure including the provisions contained in Order XXII Rule 3 are applicable to such references. When the applicant died during the pendency of the proceedings before the Reference Court, the legal representatives of the applicant are entitled to make an application to the Court for bringing themselves on record as the legal representatives of the deceased party. It was also held by the Gujarat High Court that no time limit is prescribed for filing of an application for substituting the legal representatives of the deceased applicant and that Article 176 of the

Limitation Act, 1908 (corresponding to Article 120 of the Limitation Act, 1963) would not apply.

9. The Madhya Pradesh High Court in **Abdul Karim** v. **State of Madhya Pradesh** (AIR 1964 MADHYA PRADESH 171), held that the provisions of Order XXII of the Code of Civil Procedure do not apply to the proceedings under Section 18 of the Land Acquisition Act. It was held:

> "Section 53 cannot be read as creating a fiction for deeming "proceedings before the Court under the Act" as proceedings in any suit. It is thus plain that Order 22 of the Code of Civil Procedure cannot be applied to proceedings under Section 18 of the Act taking those proceedings as suit proceedings in reality or fictionally under the Code of Civil Procedure. Its applicability to proceedings under Section 18 of the Act can only be by virtue of Section 53 and subject to the limitation contained in that section. The limitation is that the provision of the Code of Civil Procedure intended to be applied must not be inconsistent with anything contained in the Act. For the purpose of inconsistency it is not necessary that there should be an express provision to the contrary in the Act itself. It would be enough if the applicability of a provision of the Code of Civil Procedure to any proceedings before the Court under the Act would be incompatible with the nature of the proceedings."

It was further held by the Madhya Pradesh High Court that the presiding Judge has to make an award once a reference is made under Section 18, no matter whether the person at whose instance the reference has been made appears or fails to appear before the Court or fails to produce evidence in support of his objection. It was the view of the Madhya

Pradesh High Court that there could be no dismissal of the reference as abated due to non-impleadment of the legal representatives of the deceased claimant. In this context the Madhya Pradesh High Court held that:

> "If the person who moved for the reference dies and no one comes forward to represent him in the Court, then it is clearly the duty of the Government to supply to the Court the names and addresses of the legal representatives of the deceased claimant to enable the Court to issue fresh notices to them under Section 20. In the present case, there was no difficulty about tracing the legal representatives of Abdul Hakim and issuing notices to them. They themselves had come forward as his legal representatives and made an application for being brought on record as Abdul Hakim's legal representatives. The learned Additional District Judge should have, therefore, brought Abdul Karim and Abdul Majid on record as the legal representatives of Abdul Hakim and given them an opportunity of leading evidence in support of the objection made by Abdul Hakim to the award given by the Land Acquisition Officer. He was clearly in error in applying Order 22 of the Code of Civil Procedure and Articles 171 and 176 of the Limitation Act. If, as we have said above, the proceedings under Section 18 are not suit proceedings, and in the very nature of those proceedings Order 22 cannot be applied to them, then clearly neither Article 171 nor Article 176 can be invoked. It must be remembered that Article 176 of the Limitation Act applies to suits and appeals arising out of a suit. It has no applicability to other proceedings. If Order 22 can properly be applied to proceedings which are not suit proceedings, then the relevant article of limitation would be the residuary Article 181 and not Article 176 of the Limitation Act."

10. A Full Bench of the Delhi High Court in **Mst.Ram Piari and**

others v. **The Union of India** (AIR 1978 DELHI 129) took the view that Order XXII Rules 3 and 9 would apply to a reference under Section 18 of the Land Acquisition Act and that the Limitation Act also would apply. The legal representatives of the deceased party are bound to apply to the Court for being brought on record to enable them to prosecute the reference. One of the reasons for taking this view is that no obligation is cast on the Court to make an award on the failure of the applicant at whose instance the reference is made, to appear and to adduce evidence. The Full Bench also took the view that no obligation is cast on the Collector to furnish the names and addresses of the legal representatives of the deceased claimant to keep the reference alive.

11. Another Full Bench of the Delhi High Court in **Chander and others** v. **Mauji and others** (AIR 1989 DELHI 97) followed the decision in AIR 1978 DELHI 129(supra) and held that the provisions of Order XXII of the Code of Civil Procedure and those of the Limitation Act relating to abatement on the death of a party would apply to the proceedings under Sections 30 and 31 of the Land Acquisition Act and also to the appeal arising out of the said proceedings.

12. I have carefully considered the different views expressed by the

Delhi, Calcutta, Madhya Pradesh and Gujarat High Courts. It is well settled by the decisions of the Supreme Court that the court dealing with a reference under Section 18 of the Land Acquisition Act has to decide the reference on the merits. The Supreme Court also has taken the view that an application under Order IX Rule 9 of the Code of Civil Procedure is maintainable before the reference court. There is a difference between an ordinary civil litigation and a reference under the Land Acquisition Act. The plaintiff can directly approach the civil court and seek his relief by presenting a plaint. A person aggrieved by the quantum of compensation fixed by the Land Acquisition Officer has no such right to directly approach the reference court by filing an Original Petition or by making any other application. He can ventilate his grievance only by filing an application before the Land Acquisition Officer stating that he is not satisfied with the amount awarded. A period of limitation is also provided under Section 18 (2) of the Act for making an application for reference. Once an application is made under Section 18 of the Act, the claimant has no role to play in the processing of the application and in bringing the matter before the reference court. The claimant need appear before the reference court on notice. Only thereafter, he can participate in the proceedings and put forward his contentions. There may arise cases where the death of the claimant may occur after making the reference application but before the

reference reaches the Court; or the death may occur after the reference reached to the Court but before notice was received by the claimant. In yet another case, the death of the claimant may occur after he received notice and before appearance is made by him before Court. Another situation may arise where the death of the claimant occurs after he enters appearance in the reference case on notice. A claimant can be said to have participated in the proceedings before the reference court only on receipt of notice. So there can be no doubt that if the death occurs before the matter reaches the reference court, it is the duty of the Land Acquisition Officer to furnish the details of the legal representatives of the claimant and make a proper reference to the court. Once the matter reaches the Court by way of reference, the Land Acquisition Act does not provide for any duty on the Land Acquisition Officer to make an application to substitute the legal representatives of the claimant. The claimant in the reference case would be in the position of a plaintiff. Therefore, in cases where the death occurs after the reference reaches the court and notice is received by the claimant, it can be safely concluded that the legal representatives of the deceased claimant have to come on record on their application. I am also of the view that if the death occurs after the reference and before notice is served on the claimant, the Land Acquisition Court could legitimately direct the Land Acquisition Officer to furnish the details of the legal

representatives of the claimant so that notice could be issued by the Land Acquisition Court to those legal representatives.

13. In so far as abatement is concerned, I prefer to agree with the view taken by the Madhya Pradesh High Court that there could be no dismissal of the reference case on the ground of abatement.

14. On consideration of the various views expressed by the High Courts and taking into account the statutory provisions, I am of the view that the following principles can be adopted, which, according to me, would be more suitable and would cause less inconvenience to the parties.

(1) If the death of the claimant occurs before the reference is made, certainly the duty is on the Land Acquisition Officer to make a reference showing the legal representatives of the deceased claimant as additional claimants.

(2) If the death of the claimant occurs after the reference reaches the Court and before service of notice, the reference court shall address the Land Acquisition Officer to furnish details of the legal representatives of the deceased claimant and thereafter the Land Acquisition Court shall issue notice to those legal representatives.

(3) If the death of the claimant occurs after the claimant has received notice in the Land Acquisition Reference, the duty to come on record

is on the legal representatives of the deceased and to that extent, the provisions of Order XXII of the Code of Civil Procedure would apply.

(4) The provisions of Order XXII as regards abatement would not apply to Land Acquisition Reference. Since there could be no abatement, there is no question of there being delay in making the application for impleading. The question of condonation of delay, therefore, does not arise at all.

(5) The provisions of the Land Acquisition Act or the Code of Civil Procedure do not cast any inhibition on the legal representatives of the deceased claimant for applying to bring them on record as additional claimants in the party array in the land acquisition proceedings. If such an application is filed by the legal representatives, nothing prevents the Land Acquisition Court in entertaining that application and impleading the legal representatives of the deceased with due notice to the Land Acquisition Officer. It is not necessary to refer the matter back to the Land Acquisition Officer for a report since the Land Acquisition Officer is already on the party array in the Land Acquisition Reference. Objection, if any, to such impleading could be raised by the respondent Land Acquisition Officer and the Court could consider the same on the merits.

In view of the principles enunciated above, the Writ Petition is disposed of permitting the petitioner and other legal representatives of the deceased Raphel to file an application before the Land Acquisition Court for impleading. If such an application is filed, the Land Acquisition Court shall implead them as additional claimants and dispose of the Land Acquisition Reference on the merits. The Land Acquisition Court shall dispose of the reference as expeditiously as possible in view of the fact that the award was passed in 1992 and more than 15 years elapsed since the date of award.

(K.T.SANKARAN)
Judge

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